

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Sandston, VA,
Employer**

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**Docket No. 17-0621
Issued: June 26, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 23, 2017 appellant filed a timely appeal from a July 27, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from July 27, 2016, the date of OWCP's last decision was January 23, 2017. Since using January 26, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 23, 2017 rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established employment-related permanent impairment to her left lower extremity for schedule award purposes.

FACTUAL HISTORY

On May 22, 2001 appellant, then a 40-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that her left knee condition was causally related to factors of her federal employment. She attributed her condition to prolonged standing, bending, and stooping in her federal employment. The record indicates that the employing establishment had offered appellant a light-duty position on May 11, 2001. OWCP accepted the claim on July 31, 2001 for aggravation of left knee degenerative joint disease.

On April 29, 2002 appellant filed a claim for a schedule award (Form CA-7). By report dated February 6, 2002, Dr. Kennedy Daniels, a Board-certified orthopedic surgeon, opined that appellant had five percent permanent impairment of her left knee. An OWCP medical adviser opined in an August 21, 2002 note that there was no basis for finding a permanent impairment of the left knee.

On February 23, 2007 appellant submitted another Form CA-7 schedule award claim. She resubmitted the February 6, 2002 report from Dr. Daniels. OWCP sent Dr. Daniels a February 28, 2007 letter requesting a medical report evaluating appellant's permanent impairment, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).

OWCP received a February 9, 2007 report from Dr. Geoffrey B. Higgs, a Board-certified orthopedic surgeon. Dr. Higgs indicated that appellant had reported her left knee pain was exacerbated after standing for an hour and forty-five minutes at work. He wrote that this was a new injury, with preexisting osteoarthritis, and there was no permanent impairment. Appellant submitted a May 27, 2007 statement, noting that Dr. Daniels had reported five percent permanent impairment in his February 6, 2002 report.

In a report dated September 27, 2007, Dr. Daniels reiterated that he had rated appellant with five percent permanent impairment of the left leg on February 6, 2002. He reported that this was based on pain under the fifth edition of the A.M.A., *Guides*. Dr. Daniels wrote that he would consider this employment related as her underlying condition was aggravated by work.

By letter dated September 16, 2009, OWCP advised appellant that permanent impairment evaluations must be made under the sixth edition of the A.M.A., *Guides* as of May 1, 2009. It advised appellant to submit a new medical report, and included a permanent impairment worksheet.

Appellant submitted an October 2, 2009 report from Dr. Daniels, who indicated that he did not believe any of the categories listed in the permanent impairment worksheet applied to appellant. Dr. Daniels wrote that he would "reiterate the previous determination" that appellant had five percent left lower extremity permanent impairment based on pain. He completed a

permanent impairment worksheet dated October 14, 2009. Dr. Daniels indicated that appellant had x-rays and again opined that she had five percent left lower extremity permanent impairment. On July 5, 2013 appellant resubmitted the October 14, 2009 permanent impairment worksheet from Dr. Daniels.

By decision dated January 14, 2016, OWCP denied appellant's schedule award claims, finding that the medical evidence of record was insufficient to establish entitlement to a schedule award.

Appellant requested a review of the written record by an OWCP hearing representative on February 10, 2016. By decision dated July 27, 2016, the hearing representative affirmed the January 14, 2016 decision. She found that appellant had not submitted probative medical evidence to establish permanent impairment of her left lower extremity.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁵

An employee seeking compensation for permanent impairment under FECA has the burden of proof to establish the essential elements of the claim, including that an employment injury contributed to a permanent impairment of a scheduled member or function of the body.⁶ The medical evidence necessary to support a schedule award includes a physician's detailed report that provides a sufficient description of the impairment.⁷

OWCP's procedures provide that specific medical evidence is required to support a schedule award including: competent medical evidence which shows that the impairment has reached a permanent and fixed state or maximum medical improvement; medical evidence which describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability; and medical evidence which gives a percentage of impairment based on

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ *A. George Lampo*, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 09-03 (March 15, 2009).

⁶ *See A.B.*, Docket No. 12-1392 (issued January 24, 2013).

⁷ *See James E. Jenkins*, 39 ECAB 860 (1988).

a specific diagnosis.⁸ The report of the impairment evaluation should include a detailed report that includes history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated.⁹

ANALYSIS

In the present case, appellant seeks a schedule award based on her accepted left knee injury. The Board finds that the medical evidence of record is insufficient to establish permanent impairment of her left lower extremity.

The only medical evidence submitted regarding a left lower extremity permanent impairment was provided by Dr. Daniels. This evidence is of little probative value as to permanent impairment under the A.M.A., *Guides*. OWCP advised appellant that she must submit medical evidence with respect to a permanent impairment under the sixth edition of the A.M.A., *Guides*. Dr. Daniels opined in his October 2, 2009 report that appellant had five percent left lower extremity permanent impairment based on pain. This appeared to be based on his prior opinions from February 6, 2002, and September 28, 2007. He indicated that none of the categories in the permanent impairment worksheet under the sixth edition applied to appellant. When he completed a permanent impairment worksheet on October 14, 2009, he did not identify a table or explain how the A.M.A., *Guides* were applied. Dr. Daniels wrote only that there were x-rays and appellant had five percent permanent impairment. Thus, the Board finds that appellant did not meet his burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established an employment-related permanent impairment of her left lower extremity.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013).

⁹ *Id.* at 2.808.6(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2016 is affirmed.

Issued: June 26, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board